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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION

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8 PETER NEWSOM AND STEPHANIE  
NEWSOM,

9 Plaintiffs,

10 vs.

11 BANKERS ALLIANCE, COUNTRYWIDE  
HOME LOANS, INC. DBA  
12 AMERICA'S WHOLESALE LENDER,  
MORTGAGE ELECTRONIC  
13 REGISTRATION SYSTEMS, INC.,  
BANKERS ALLIANCE INC., JULIE  
14 WHITESIDE, and DOES 1-20, inclusive,

15 Defendants.  
16

Case No: C 09-5288 SBA

**ORDER ACCEPTING REPORT  
AND RECOMMENDATION OF  
MAGISTRATE JUDGE AND  
DISMISSING ACTION**

17 Magistrate Judge Nandor Vadas ("Magistrate") previously recommended that the  
18 Court issue an order to show cause why the action should not be dismissed as to Defendant  
19 Julie Whiteside ("Whiteside") for failure to serve her with summons and the complaint  
20 within 120 days, as required by Federal Rule of Civil Procedure 4(m). The Court adopted  
21 the recommendation and issued an order to show cause, which was later discharged based  
22 upon representations by Plaintiffs' counsel regarding his allegedly diligent efforts to serve  
23 Whiteside.

24 In July 2013, Whiteside filed a pro se motion to dismiss under Rule 12(b)(5) in  
25 which she argued that the action should be dismissed based on Plaintiffs' failure to comply  
26 with Rule 4(m). The Court referred the motion to the Magistrate for a report and  
27 recommendation. In his Report and Recommendation, the Magistrate recommended  
28 denying the motion based on the Court's prior order discharging the order to show cause

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1 under Rule 4(m), but expressed skepticism with respect to Plaintiffs’ alleged good faith  
2 efforts to properly serve Whiteside. As a result, on November 15, 2013, the Court issued  
3 an Order of Reference to the Magistrate for a report and recommendation as to whether:  
4 “(1) the Court should reconsider its prior decisions discharging the order to show cause and  
5 finding “good cause” to grant Plaintiffs an extension of time under Rule 4(m) to serve  
6 Whiteside; and (2) the Court should now dismiss the action as to Whiteside under Rule  
7 4(m), her motion to dismiss, or any other basis.” Dkt. 189.

8 On February 20, 2014, after conducting an evidentiary hearing and considering the  
9 parties’ written submissions, the Magistrate issued a Report & Recommendation Re:  
10 Reconsideration of Decision Discharging Order to Show Cause which states, in pertinent  
11 part, as follows:

12 [The Magistrate] recommends that the district court rescind its  
13 order discharging the order to show cause, find there was no  
14 good cause for the delay, and order the case against Whiteside  
15 be dismissed under Rule 4(m). Because the statute of  
16 limitations has run on Plaintiffs’ claim, the undersigned  
17 recommends that the case be dismissed with prejudice, as any  
18 amendment would be futile.


19 Dkt. 205 at 11.

20 A party has fourteen days from service of the recommended disposition to file  
21 objections thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). The Magistrate served  
22 his report and recommendation on February 20, 2014, meaning that any objections were  
23 due by March 6, 2014. No objections were filed by that date. In the absence of a timely  
24 objection, the Court “need only satisfy itself that there is no clear error on the face of the  
25 record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee  
26 notes (1983) (citing Campbell v. U.S. Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974)); see  
27 also United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (“The  
28 statute [28 U.S.C. § 636(b)(1)(C)] makes it clear that the district judge must review the  
magistrate judge’s findings and recommendations de novo *if [an] objection is made*, but not  
otherwise.”). The Court has reviewed the record on its face and finds no clear error.  
Accordingly,

1 IT IS HEREBY ORDERED THAT the Magistrate's report and recommendation  
2 (Dkt. 205) is ACCEPTED and shall become the Order of this Court. For the reasons set  
3 forth in the report and recommendation, the Court vacates its Order Discharging Order to  
4 Show Cause (Dkt. 109) and dismisses the instant action with prejudice pursuant to Rule  
5 4(m).

6 IT IS SO ORDERED.

7 Dated: March 7, 2014

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge